IN THE HIGH COURT OF JUDICATURE AT BILASPUR,

[C.G.] **Division Bench**

M.C.C. NO. 156 /2005

{Arising out of W.P. No. 1041 of 1998}

IN THE MATTER OF:

PETITIONER : M/S RAYMOND LIMITED CEMENT DIVISION, MUMBAI AND ANOTHER

P.R. No. 1985 dt. 28
Presented by Shri Amit Singh
dated 27.7.05

~VERSUS~

RESPONDENTS : ADDITIONAL COMMISSIONER OF COMMERCIAL TAX, RAIPUR AND OTHERS.

APPLICATION FOR REVIEW AND MODIFICATION OF THE ORDER DATED 28 JUNE, 2005 PASSED BY THE HON'BLE COURT IN THE ABOVE WRIT PETITION ON PRINCIPLES ANALOGOUS TO ORDER 47 RULE 1 C.P.C. READ WITH SECTION 151 C.P.C. ON BEHALF OF THE PETITIONER ABOVE NAMED.

(37)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri Sunil Kumar Sinha, J.

M.C.C. No.156 of 2005

Raymond Cement Works

Versus

Assistant Commissioner of Sales Tax and others.

M.C.C. No.157 of 2005

Raymond Cement Works

Versus

The General Manager,
District Industries Centre, Bilaspur and others

M.C.C. No.158 of 2005

M/s. Raymond Limited Cement Division,
Mumbai and another

Versus

Additional Commissioner of Commercial Tax,
Raipur and others.

AND

M.C.C. No.159 of 2005

Raymond Cement Works

Versus

Assistant Commissioner of Sales Tax and others.

Present: Mr. B.P. Sharma learned counsel for the petitioner.

Mr. V.V.S. Murthy, Dy. Advocate General for the respondent.

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(38)

ORDER
(Passed on 5th August, 2005)

The following Order of the Court was passed by **A.K. Patnaik, CJ: -**

These are applications for review of our common judgment and order dated 28th June, 2005 passed in Writ Petition Nos.4294 of 1992, 1750 of 1991, 1041 of 1998 and 1965 of 1991.

(2) The petitioner filed Writ Petitions No.1965 of 1991, 4294 of 1992, 1750 of 1991 and 1041 of 1998 challenging the order dated 15.04.1991 passed by the Under Secretary of the Department of Industry, Government of Madhya Pradesh by which the petitioner was informed that it was not entitled to eligibility certificate for deferment of tax payable under the Madhya Pradesh General Sales Tax, 1958 and the Central Sales Tax Act, 1956 for a period of ten years under the Madhya Pradesh Deferment of Payment of Tax Rules, 1986 as well as the demands of sales tax made under the Madhya Pradesh General Sales Tax Act, 1958 and the Central Sales Tax Act, 1956 pursuant to the said order dated 15.04.1991 passed by the Under Secretary, Department of Industry, Government of Madhya Pradesh. By a common judgment and order dated 28th of June, 2005 delivered in the said writ petitions, the Court held that even if the petitioner's case for deferment of tax was accepted, the period of ten years for deferment was already over and the petitioner was required to pay back the entire tax which was to be deferred under the Rules by 2003-04.

(3) In paragraph 7 of the said judgment and order dated 28th June, 2005 the Court observed that by an interim order passed by this Court as modified by the Supreme Court, the petitioner was directed to deposit a portion of the impugned demands and to furnish bank guarantee for a portion of the impugned demands and recovery of the balance was stayed and the petitioner will have to pay the balance of the impugned demands in accordance with the provisions of Rule 9 of the Deferment of Payment of Tax Rules, 1986 read with the provisions of the Madhya Pradesh General Sales Tax Act, 1958 and the rules made thereunder as well as the Central Sales Tax Act, 1956 and the rules made thereunder. The Court accordingly, disposed of the writ petitions with the some

directions in para 9 of the said judgment and order dated 28th June 2005, which is quoted herein below:

> "9. Accordingly, these writ petitions are disposed with a direction that the Registry of this Court shall, within one month from today, pay to the Sales Tax Officer, Bilaspur the amount already deposited by the petitioner together with interest. The balance amount of the tax that will be payable by the petitioner after adjustment of the amount received from the Registry of this Court, will be worked out by the Sales Tax Officer and notices of demand for the balance tax will be served on the petitioner in accordance with the Rule 9 of the Rules read with Rule 27 of the Madhya Pradesh General Sales Tax Rules, 1959 as provided in Rule 9 of the Rules and will be recovered from the petitioner. The bank guarantees furnished by the petitioner pursuant to interim orders passed by this Court as modified by the orders of the Supreme Court will be released by this Court only after the petitioner pays the entire amount of tax as demand by the Sales Tax Officer, Bilaspur and the petitioner files an application for release of the bank guarantees after payment of such tax."

(4) In these review applicationa the petitioner has stated that by the time the said common judgment and order was delivered, the entire tax due amounting to Rs.6,66,10,680/- for the period for which the writ petitions were filed had been paid by the petitioner and that no amount was due and owing to the sales tax authorities towards sales tax under the Madhya Pradesh General Sales Tax Act, 1958 or under the Central Sales Tax Act, 1956.

(5) Mr. Murthy, on instruction from Mr. Vinay Shrivastava, Commercial Tax Officer, Bilaspur submitted that by a communication No.702 dated 27.07.2005, the Commercial Sales Tax Officer, Circle-I has communicated to the Additional Registrar (Judicial) that the following amounts have been paid by the petitioner under the Central Sales Tax Act, 1956 and under the Madhya Pradesh General Sales Tax Act, 1958 for the years 1986-87 to 1991-92 and that no amount of tax remains to be recovered from the petitioner for the periods covered by the writ petitions. The said communication is extracted herein below:

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"कार्यालय वाणिजियक कर अधिकारी बिलासपुर वृत एक

क्रमांक वा.क/एक/05/ बिलासपुर दिनांक 27/07/2005

प्रति

श्रीमान असिस्टेंट रजिस्ट्रार (न्यायिक)
उच्च न्यायालय छत्तीसगढ़
बिलासपुर

विषय :-रेमण्ड सीमेंट वर्क्स प्रोडक्ट रेमण्ड उलन मिल्स लिमिटेड लिंक रोड बिलासपुर के एम.पी. न. 1965/91 एवंम 4292/92.

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उपरोक्त विषय के अंतर्गत दिनांक 27/01/87 से 31/03/92 की अवधि में अस्थगन सुविधा हेतु आवेदन प्रस्तुत किया गया था ! विभिन्न आदेशों द्वारा निम्नानुसार मांग निकाली गई थी :-

प्रान्तीय

स.क.	अवधि	चालान न.	दिनांक	राशि
1.	86-87	1/24	14/11/2000	460531/-
2.	87-88	1/25		1754382/-
3.	88-89	1/26		3790913/-
4.	89-90	1/27		5098049/-
5.	90-91	1/28		7516638/-
6.	91-92	1/29		10741643/-
			TOTAL	29362156/-

केंद्रीय				
1.	87-88	1/19	14/11/2000	2674237/-
2.	88-89	1/20		5905108/-
3.	89-90	1/21		7274969/-
4.	90-91	1/22		9341528/-
5.	91-92	1/23		12052682/-
			TOTAL	**37248524/-**

व्यवसायी द्वारा उपरोक्तानुसार कर राशि जमा किया गया हे ! इस प्रकार उपरोक्त अवधि में व्यवसायी द्वारा कर के रूप में देंय नहीं हैं !

वाणिज्यिक कर अधिकारी
बिलासपुर वृत्त एक"

(6) In view of the aforesaid submissions made by learned counsel for the parties, the observations in para 7 and the directions in para 9 of the common judgment and order dated 28th June, 2005 in W.P.Nos.1965 of 1991, 4294 of 1992, 1750 of 1991 and 1041 of 1998 are deleted and the writ petitions stand disposed of with the observations and directions in the other paragraphs of aforesaid judgment and order. The review applications are allowed accordingly.

(7) It is stated before us that the Registry has already paid the amount deposited by the petitioner pursuant to the directions in para 9 of the said judgment and order dated 28th June, 2005 by way of four cheques to the Commercial Tax Officer, Bilaspur, Circle-I. Mr. Murthy, however, submits that the said cheques have not been encashed. In view of the fact that these review applications have been allowed with the finding that no further amount of tax is due and payable to the Sales Tax Department for the relevant periods, the cheques will be returned to the Additional Registrar (Judicial) and the Additional Registrar (Judicial) will make arrangement with the concerned banks and will ensure that the amounts deposited by the petitioner are refunded to the petitioner by way of account payee cheques. He will also inform the concerned banks which have furnished the bank guarantees that the bank guarantees stand released.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

Brajesh